SUPREME COURT, U.S.

Supreme Court, U.S.
FILED
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-920

IN THE MATTER OF THE APPLICATION

of

CHARLES J. O'CONNOR, III,

Petitioner.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW JERSEY

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IN THE

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No.

IN THE MATTER OF THE APPLICATION

of

CHARLES J. O'CONNOR, III,

Petitioner.

PETITION FOR WRIT OF CERTIORARI

Your petitioner Charles J. O'Connor III, hereby petitions for a writ of Certiorari to review the decision of the New Jersey Supreme Court denying his application for admission to the N. J. State Bar with plenary license and denying his motion to strike the report of the Essex County Committee on Character filed in opposition thereto as being moot despite the following:

1) overwhelming evidence of record of good moral character on the part of the applicant

2) the report of the Essex county Committee on character was prepared and filed after the date on which under applicable Rules of Court the said committee had been abolished and the office ceased to exist

legally it having been replaced by another quasi-judicial administrative entity

Procedural History

By Order of the Supreme Court of New Jersey dated Oct. 19, 1971 the applicant was denied admission to the N. J. State Bar on his petition filed June 29, 1971.

By Order of the Supreme Court of New Jersey dated Oct. 20, 1971 petitioners motion to strike the Report of the Essex County Character Comm. was denied as moot.

No argument was allowed upon either the Petition for Admission nor the motion to strike.

No written opinion was delivered in the case.

Jurisdiction

The Orders from which Writ of Certiorari to review is sought are included in the appendix hereto and dated October 19, 1971 and October 20, 1971.

The statutory provision believed to confer jurisdiction upon this Honorable Court is: 28 USC Sec. 1257 (3).

Questions Presented for Review

I. Whether consistent with the due process clause of the 14th Amendment to the Constitution of the U.S. a state may deny admission to the bar to an applicant on the ground of lack of good moral character having subjected his application to a procedure or process determinative of his character which procedure is neither prescribed nor authorized by the published New Jersey

Rules of Court purporting to be applicable to all such determinations.

2. Whether, upon the applicant's refusal to answer questions put by the Committee on Character seeking the names, docket numbers, nature of the case, nature of the papers filed in the case, which Petitioner, a licensed attorney of the United States Tax Court, had in litigation before a Federal Court at the time, the New Jersey Supreme Court and its Committee on Character had the right to deny petitioner's application for plenary admission to the Bar of the State of New Jersey.

3. Whether the New Jersey Supreme Court had the right to rely upon a report adverse to petitioner's good moral character, which report was prepared and filed after the date on which the said committee, as a legal entity, ceased to exist under applicable New Jersey Law.

Constitutional Provisions Involved

Amendment XIV United States Constitution Section 1 Clause 2

> "... nor shall any state deprive any person of ... property without due process of law ..."

Statement of Facts

On September 28, 1970 Petitioner filed with the Essex County Character Committee, Newark, Essex County, New Jersey, a petition for certification of his good moral character under order of the New Jersey Supreme Court dated November 20, 1969. Attached to the petition was evidence that petitioner is a member of the bar of the U. S. District Court, District of Columbia, since 1956, of the U. S. Tax Court since 1959, of the Ameri-

can Bar Association, is licensed by the Department of Banking and Insurance of the State of New Jersey, by the New Jersey Real Estate Commission and is a Notary Public of the State of New Jersey. Since then, the applicant has been admitted to the bar of the Supreme Court of the United States on February 22, 1971.

The Chairman of the Committee appointed a Sub-Committee to review and act upon Mr. O'Connor's application. The sub-committee interviewed Mr. O'Connor on November 11, 1970 and on March 26, 1971 the Committee advised Mr. O'Connor that it was not prepared to certify him as a person of good moral character.

The Committee has given no reasons for its withholding certification, except that one member assumed at the hearing that because Mr. O'Connor refused to divulge the name of the case being conducted by him before the Tax Court, that Mr. O'Connor was hiding something which adversely affects his character. Neither of the other members of the sub-committee gave any indication as to why they refused to certify the applicant.

There is ample evidence of the good moral character of the applicant and no evidence to the contrary.

On April 1, 1971 the Essex County Character Committee held a hearing which was not attended by the applicant as he had requested no hearing under N.J.R.R. 1:25-3 which gave the option to an applicant to request a formal hearing after a refusal to certify.

On June 29, 1971 petition for admission to the bar with plenary license was filed in N. J. Supreme Court pursuant to N.J.R.R. 1:25-3.

Effective on September 13, 1971 the N. J. Court Rules were amended to abolish all county character committees in the state and replace them with another legal entity.

The Essex County Committee on Character in a report dated September 16, 1971 and filed September 21, 1971, prepared a report adverse to petitioner's character by way of answer to the petition for admission filed by petitioner.

Thereafter, petitioner filed a motion in the Supreme Court of New Jersey to strike the report of September 16, 1971 of the Essex County Committee on Character as being "ultra vires" under applicable N. J. law and cases.

On October 19, 1971 the New Jersey Supreme Court denied the petition for plenary admission to the bar, without opinion, and on October 20, 1971, denied the motion to strike as being moot.

ARGUMENT

POINT ONE

The Essex County Character Committee has violated those procedural rights guaranteed by the N. J. State Constitution and the 14th Amendment to the Constitution of The United States.

A Petition was filed on September 28, 1970 with the Essex County Character Committee pursuant to order of this court dated November 28, 1960. On November 16, 1970 the petitioner received the following letter:

"Essex County
Committee on Character and Fitness
Appointed by the
Supreme Court of New Jersey

David M. Satz, Jr.
11 Commerce Street—Room 2440,
Newark, New Jersey 07102

November 16, 1970

Sherwrn Drobner, Esq.
Bloom and Drobner
12 Mountain Avenue
Springfield, New Jersey 07081

Dear Mr. Drobner:

Francis W. Thomas, Chairman of the Essex County Character and Fitness Committee, has referred the application of Charles J. O'Connor, III to this Sub-Committee, consisting of George Buermann, Donald Coburn and the undersigned, *for review and action.* (Emphasis supplied) It is noted in your letter dated November 11 that Mr. O'Connor's application be considered in time for certification so that if recommended, Mr. O'Connor may be sworn in as an attorney on December 1, 1970.

In order to accommodate your request, our Sub-Committee will hear Mr. O'Connor on Thursday, November 19th at 3:00 P.M. in my office. By telephone, your secretary acknowledged that this date would be suitable according to your calendar. If there are any problems regarding the date, please get in touch with me as promptly as possible.

Sincerely yours,

s/ David M. Satz, Jr."

DMS:ee

cc: George Buermann, Esq.
Donald Coburn, Esq.

This meeting was held on November 11, 1970, and a full transcript thereof reproduced. To date the subcommittee

before which said meeting was held has not complied with the provisions of R. 1:25-3 as to prompt notice of its intention to withhold certification of applicant. Rather, the Committee, by letter dated March 17, 1971 notified applicant of a formal meeting to be held before the full Committee on April 1, 1971. The same stated no reasons for the formal hearing contemplated and advised no objections to certification, no subject matter of inquiry, no charges against the applicant, nor names of witnesses to be heard. Such procedure denies applicant the right to confront any such witnesses and denies him the opportunity to submit evidence as to any point which might be in doubt.

Further the Committee by letter dated March 26, 1971 informed petitioner that:

> "The hearing before the subcommittee did not satisfy the full committee that it could properly certify as to the applicants good moral character."

The same is, in effect, a withholding of certification, as contemplated by the Rules of Court but deviant as to form. It is a reversal of the procedure originally adopted by the committee in its letter on November 16, 1970 by which "review and action" were indicated. This unique procedure now adopted by the committee places on applicant the burden of producing before the full committee in April that which was already produced on the record of November 19, 1970 in contemplation of a decision. Such a needless duplication is an unwarranted delay and is a procedure not countenanced by R. 1:25-3.

There is no doubt that under the then applicable rules of court the subcommittee was fully empowered to act. R. 1:25-1 authorized three man subcommittees.

By former R. 1:25-4, the Board of Bar Examiners was empowered to prescribe rules governing the exact procedures to be used by the various Committees on Character in conducting their hearings. No such rules had been prescribed.

If the respective Committees on Character were therefore, authorized to adopt any procedure at will, to any applicant at random, then the entire process of admission to the New Jersey State Bar violates equal protection of the laws guaranteed by the 14th Amendment to the Constitution of the United States, as there could be 21 different procedures in use at any one time in the various counties multiplied by the total number of applicants in the respective counties.

Since such unbridled discretion may not constitutionally be the contemplated object of Rules of Court pertaining to admission to the Bar, the procedural standard which is obligatory is that minimum standard generally described as "procedural due process of law". *Schware v. Bd. of Bar Examiners*, 353 U.S. 232 (1957).

In this instance the Essex County Character Committee had adopted a most singular procedure, not countenanced by applicable Court Rules, by which a hearing is held for "review and action", no action is taken, certification is withheld, no reasons therefore are given to petitioner, and a further hearing is scheduled and no reasons are offered for holding same.

In subjecting an applicant to this special and peculiar treatment procedural due process of law and equal protection of the law have been denied to him.

POINT TWO

The Essex County Character Committee has violated rights of substantive due process of law guaranteed to the applicant by the Constitution of the State of New Jersey and the 14th Amendment to the Constitution of the United States.

At the formal hearing before the subcommittee held on 11-19-70 the applicant respectfully declined to answer one question put to him and did so sincerely upon a question of privilege, relevance and materiality of the answer. The question sought the name of the case being conducted by applicant before the Tax Court of the United States.

One member of said subcommittee drew therefrom an inference adverse to applicant's moral character, which inference was not only unwarranted by the circumstances but is expressly forbidden on Constitutional grounds under the 14th amendment to the Constitution of the United States. *Konigsberg* v. *State Bar of California*, 353 U. S. 252 (1957). He said (pg. 53, l 17):

* * *

> "Mr. Coburn: I would like to say for the record that just for myself that so long as we do not have the names of these cases, that the only assumption that I can draw is that there is something in those papers or in those cases Mr. O'Connor believes adversely affects his character and I think for his own sake that he (54)* is making a mistake in judgment as to propriety, and I think you would find

---

* All figures in parentheses refer to each new page of the stenographic transcript.

that out if you searched and revealing his client's name, particularly where we are not talking about a private client retained, where there are no corporate proceedings but merely asking for the names and docket numbers of cases that are on file with the tax court, that there is absolutely no breach of ethics on his part in giving the name of his case, and that since there is none in my judgment, unless you can show me different in brief, and I doubt it, but I will be open to seeing it, I must assume that there must be something there that adversely affects his character.

Mr. Drobner: Mr. Coburn, I want you to use your imagination and suggest to me what you might find there that would adversely reflect on his character.

Mr. Coburn: All right, his (55) conduct in that court, the nature of the papers filed, the nature of the case filed.

Mr. Drobner: Conduct in court? Wouldn't that refer to his competency?

Mr. Coburn: No; I am talking about character.

Mr. Drobner: Has he been charged with any violation?

Mr. Satz: We might want to find that out.

Mr. Drobner: You have his certification to the effect that he has not been brought up on charges by the tax court for being overly exuberant.

Mr. Satz: That is something we have to find out in our investigation. All we are trying to do is get basic, plain, simple information. We are not trying to determine, as you said before, who his clients are for the purpose of deciding what they are. We are not (56) trying to find out any inside

information whatsoever on that. We are just trying to see what the situation is generally.

Mr. Drobner: In these tax court proceedings is there anything that you are ashamed of or that you feel would reflect badly on your character if you were to give the names?

The Witness: Certainly not.

Mr. Drobner: Are you under any charges or even under consideration for improper conduct before any of these courts?

The Witness: Certainly not.

Mr. Buermann: Have there been occasions when you have been held in contempt by the tax court?

The Witness: Never."

* * *

The subcommittee indicated for the record the full extent of the line of inquiry they wished to pursue upon the answer to the question put. The same included "the nature of the papers filed, the nature of the case filed." (*supra*).

This would constitute an intrusion into the private affairs of his clients, both past and present. The scope of inquiry suggested is arbitrarily wide, practically without limit, and would certainly have a most chilling effect upon personal privacy, attorney-client privilege, and upon property rights of applicant and his client.

That such an inquiry might be justified is negated by the fact that the applicant has has no complaints or charges filed against him before any court or administrative or licensing body and the same is a matter of record.

Were this caprice to be indulged, and every legal paper, insurance policy issued, paper notarized, and letter written by the petitioner in the last few years be scrutinized

the character investigation contemplated by the Rules of Court would last until the applicants dotage.

The adverse inference illegally drawn as to petitioner's character has tainted the whole proceeding. In the letter of March 26, 1971 it is stated that "The hearing before the subcommittee did not satisfy the full committee * * *". To the extent that any lack of satisfaction on the part of the full committee is based upon such a constitutionally forbidden inference of bad moral character, to that extent the constitutional rights of the petitioner have been violated by the full committee.

In the letter of March 26, 1971, the Committee openly states the standard which it expects the petitioner to meet in order to obtain admission to the New Jersey State Bar:

> "The committee will not make the requisite certification until the committee *feels* it is justified in doing so." (Emphasis supplied.)

This is a standard which *no* applicant can meet. The "feelings" of this committee, or any other committee, are their private concern and are not subject to alteration by the petitioner by any means at all. No facts can convince, no evidence can alter, no plea may prevail against a "feeling".

As a standard it is discriminatory, vague, indefinite and arbitrary. It negates equal protection of the law.

As a standard for admission to the bar it is unconstitutional. *Schware v. Bd. of Bar Examiners, supra, Konigsberg v. State Bar of California, supra, Baird v. State Bar of Arizona*, 91 S. Ct. 702 (1971), *Application of Stolar*, 91 S. Ct. 713 (1971).

POINT THREE

The petitioner, on the record, has sustained the burden of proof as to his good moral character and should be admitted forthwith to the New Jersey State Bar as an attorney with plenary license.

A license to practice law is not a privilege; it is a right. In *Baird v. State Bar of Arizona, supra*, the United States Supreme Court stated:

> "The practice of law is not a matter of grace, but of right for one who is qualified by his learning and his moral character, see Schware v. Bd. of Bar Examiners, 353 U. S. 232 and Ex Parte Garland, 4 Wall 333, 18 L. Ed. 366 (1866). This record is wholly barren of one word, sentence, or paragraph that tends to show this lady is not morally and professionally fit to serve honorably and well as a member of the legal profession." (pg. 707)

Similarly, in *Application of Stolar, supra*, the Ohio Supreme court was directed to issue a license to the applicant upon determination that the information supplied was sufficient to compel admission, i.e., extensive personal and professional information as well as numerous character references to enable the investigating committee to make the necessary determination (page 716).

The record in the case at bar is barren of allegations of bad moral character. Indeed, the Essex County Character Committee has yet to ascribe any reason for withholding certification apart from its enigmatic "feelings."

The record is well documented with evidence indicative of good moral character and high professional and busi-

ness capability. These include a license to practice before the United States District Court for the District of Columbia, United States Tax Court, the United States Supreme Court and membership in the ABA. The petitioner is a licensed New Jersey Real Estate Salesman, an Insurance Broker and a Notary Public. Petitioner secured in advance of and appended to the record of the hearing on November 19, 1970 numerous letters of recommendation, in excess of the number usually called for, from members of the legal profession of high repute and credibility.

At no time have any complaints, charges or inquiries been lodged as to petitioner's professional conduct or capacity in any of his occupations since the date the licenses were originally obtained.

The applicant, further, has fully cooperated with the said committee by obtaining evidence requested of him subsequent to the hearing and submitting the same promptly. The record, viewed on the whole, discloses a full and complete disclosure to the committee of all personal, professional and business data by the applicant, sufficient for the requisite determination.

The standard to apply in such instances is to test the applicant for his ability and moral capacity to function at the particular capacity sought after and not to measure him in a general sense, or in a vacuum. *In re Hiers*, 15 [illegible]. *In re Mathews*, 34 N. J. 250 (1961). *In re Pyatt*, N. J. 382 (1954); *Schlesinger v. Bd. of Bar Examiners*, [illegible] 36 N. J. 401 (1962). *In re Pyatt*, 36 N. J. 146 (1961).

POINT FOUR

Petitioner has been denied due process of law and equal protection of the law by the acceptance of an "ultra vires" report adverse to his good moral character.

The report of the Essex County Character Committee should not have been considered. The jurisdiction of an administrative agency in New Jersey is dependent solely on its enabling legislation. *Nagy* v. *Ford Motor Co.*, 6 N. J. 341 (1951). Similarly an appointee to an office having no legal being has repeatedly been held in New Jersey to have no power to act nor to have color of authority to act. *Haidon* v. *Town of Belleville*, 4 N. J. 99 (1950); *Toomey* v. *McCaffrey*, 116 N. J. L. 364 (1936); *Van Brookhoven* v. *Kennedy*, 125 N. J. L. 178 (1940).

N.J.R.R. 1:25-1 was amended effective September 13, 1971 to abolish all the county Character committees and this rule was supplanted with the following:

> "The Supreme court shall appoint one or more committees on character composed of such number of attorneys as it may determine."

The office having been abolished the report of September 16, 1971 was a nullity and should have been stricken from the record.

In the determination of so serious a matter as the right to practice law the use of an adverse recommendation from parties having questionable authority to act is not moot as set forth by the order of the Supreme Court of New Jersey, dated October 20, 1971.

Furthermore, the record of the hearing of April 1, 1971 is replete with references to a "minority" position admittedly "extreme" to the effect that petitioner's request for certification should be denied because of his reluctance to attend that hearing the holding of which was subject to serious questions as to its legal propriety. The effect of the orders of October 19, 1971 and October 20, 1971 of the Supreme Court of New Jersey was to give majority rule to minority opinion.

CONCLUSION

For the reasons above stated it is respectfully submitted that writ of certiorari to review this matter should be granted by this honorable court.

Dated: January 12, 1972

Respectfully submitted,

Ira Kaplan
Counsel for Petitioner
850 Broad Street,
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APPENDIX

Order of Supreme Court of New Jersey Denying Motion for Plenary Admission

(Filed—October 19, 1971.)

SUPREME COURT OF NEW JERSEY
M-57 September Term 1971

In the Matter of the Application
of
CHARLES J. O'CONNOR, III

This matter having been duly presented to the Court, it is Ordered that motion for plenary admission is denied.

Witness, the Honorable Joseph Weintraub, Chief Justice at Trenton, this 19th day of October 1971.

A True Copy

IRVING B. ZIRCHNER
Acting Clerk

Order of Supreme Court of New Jersey Dismissing Motion to Strike, etc.

(Filed—October 19, 1971.)

SUPREME COURT OF NEW JERSEY
M-75 September Term 1971

In the Matter of the Application
of
CHARLES J. O'CONNOR

This matter having been duly presented to the Court, it is Ordered that motion to strike committee report is dismissed as moot.

Witness, the Honorable Joseph Weintraub, Chief Justice, at Trenton, this 20th day of October, 1971.

A True Copy

IRVING B. ZIRCHNER
Acting Clerk